

REMARKS

In response to the Office Action mailed December 12, 2007, the Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

Summary of the Office Action

In the Office Action, Claims 39-57 and 62 stand rejected. In addition, Claims 63-69 are withdrawn from consideration as being directed to a non-elected invention. In particular, Claims 39, 45-52, 56, 57 and 62 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,716,030 issued to Bulard et al. (hereinafter "Bulard"). Further, Claims 40-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bulard in view of U.S. Patent No. 5,795,160 issued to Hahn et al. (hereinafter "Hahn"). Finally, Claims 53-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bulard in view of U.S. Patent No. 3,466,748 issued to Christensen (hereinafter "Christensen").

Summary of the Amendment

Upon entry of this amendment, Claims 63-69 will have been withdrawn. Accordingly, Claims 39-57 and 62 currently remain pending. By this amendment, the Applicant responds to the Examiner's comments and rejections made in the December 12, 2007 Office Action. Applicant respectfully submits that the present application is in condition for allowance.

Traversal of Rejection under 35 U.S.C. § 102(e)

In the Office Action, Claims 39, 45-52, 56, 57 and 62 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bulard. Applicant respectfully submits that the Section 102(e) rejection made by the Examiner in the Office Action is improper because Bulard does not qualify as a reference under Section 102(e). Furthermore, Applicant also submits that even assuming arguendo that Bulard could properly serve as a Section 102(a) reference, Bulard fails to disclose all of the features of Claims 39, 45-52, 56, 57 and 62.

Applicant initially notes that the present patent application is a divisional application claiming priority to its parent, which was filed on April 18, 2000. Applicant also notes that Bulard claims priority to PCT/US00/10827, filed on April 21, 2000, and to a U.S. Provisional

Patent Application No. 60/130,684, filed on April 23, 1999. However, under MPEP 706.02(f)(1), the Section 102(e) prior art date for U.S. patents resulting from PCT applications filed before November 29, 2000 (pre-AIPLA) is the earlier of the date on which the all of the 35 U.S.C. 371(c)(1), (2), and (4) national stage filing requirements are met or the filing date of the later-filed U.S. patent application. As indicated in the Bulard reference, the Section 371(c)(1), (2) and (4) date is July 15, 2002, and the filing date of the later-filed U.S. patent application appears to be October 23, 2001.

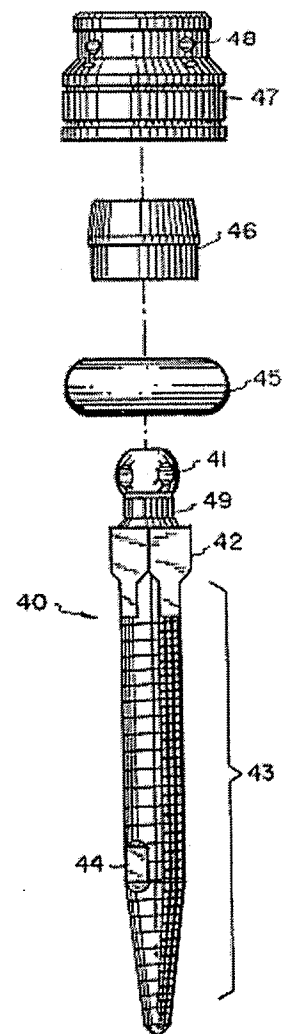
Therefore, Bulard's earliest Section 102(e) date is October 23, 2001, which is after the Applicant's priority date of April 18, 2000. Therefore, it appears that the Examiner has incorrectly asserted Bulard as a prior art reference under Section 102(e). Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection under Section 102(e).

Even assuming arguendo that Bulard is properly cited as prior art. Applicant respectfully submits that Claims 39, 45-52, 56, 57 and 62 are patentable over Bulard because Bulard fails to disclose each and every feature as recited in these claims.

Bulard is directed to a one-piece dental implant that has a threaded shaft 43, a non-circular abutment 42, a ball-shaped head 41, and a circular neck 39 disposed intermediate the non-circular abutment 42 and the ball-shaped head 41, as illustrated at right in Figure 4 of Bulard. Bulard further indicates that "ball-shaped head is attached to the non-circular abutment via a circular neck 49, as shown in FIG. 4, which ranges in length from about 0.5 to about 1.5 mm, and is most preferably about 0.8 mm. The diameter of the circular neck, in turn, ranges from about 0.5 to about 1.8 mm, and is preferably about 1.4 mm." See Bulard, col. 4, lines 47-52 (emphasis added). Bulard further indicates that the dental implant should be formed from "any strong metal or alloy thereof." See *id.* at col. 4, lines 55-60 (emphasis added).

Indeed, it appears that the purpose of the circular neck 49 is to receive the O-ring abutment 45 or a plastic insert 46 in

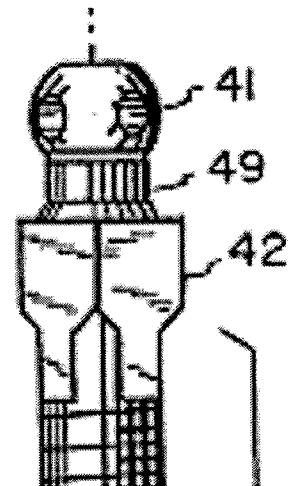
FIG.4



order to create a seal between the keeper cap 47. In fact, Bulard indicates that one of the problems of prior art fixtures is that "the connections between the O-ring abutments and the dental implant bodies can loosen over time. Another problem is that these types of fixtures exhibit bacteria and ionic microleakage at the joints." *See id.* at col. 1, lines 29-34. As such, although Bulard is silent as to whether the neck 49 of the implant can be bended, it appears that given the dimensions of the neck, the requirement that the implant be made from a strong metal or alloy, and the requirement that the O-ring abutment not loosen over time or exhibit microleakage, the neck 49 seems to be an inflexible, rigid structure of the implant.

In contrast, Claim 39 is directed to an implant, *inter alia*, having a "flexible neck segment" (emphasis added).

However, Bulard is completely devoid of any disclosure relating to a "flexible neck segment" as recited in Claim 39. To the contrary, Bulard explicitly indicates that the dental implant should be formed from "any strong metal or alloy thereof." *See id.* at col. 4, lines 55-60 (emphasis added). Applicant respectfully submits that one of skill in the art would be led to believe that the neck 49 of the Bulard implant is not intended to be and cannot be bent, especially during operational use of the implant. As shown in an enlarged, detailed view of Figure 4 at right, it is unlikely that the neck 49 is even remotely flexible if a strong metal or alloy is used, as taught by Bulard.



Furthermore, the preferred dimensions of the neck 49 are disclosed as being 0.8 mm in length and 1.4 mm in diameter. *See Bulard*, col. 4, lines 47-52. These dimensions appear to be approximately what is shown and the enlarged, detailed view of Figure 4 above. Given these preferred dimensions, Applicant respectfully submits that it would be exceedingly difficult, if not impossible to bend or flex the neck 49 of such an implant.

In fact, if Bulard were interpreted as suggested by the Examiner, several of the important attributes of the Bulard implant would be compromised. For example, as noted above, Bulard clearly teaches that the connection between the O-ring abutment and the dental implant body should not loosen over time or permit bacteria and ionic microleakage at the joints. However, if the neck 49 were flexible, the asymmetry of a bent neck 49 would cause the O-ring and the plastic insert to be improperly seated about the neck 49, thus resulting in an incomplete seal.

Accordingly, such an interpretation of the Bulard reference is not only contrary to the explicit disclosure of Bulard, but also seems to be contrary to Bulard's teachings.

As such, any rejection of Claim 39 cannot be supported with reference to Bulard. Bulard simply does not disclose a "flexible neck segment," as recited in Claim 39. Accordingly, Applicant respectfully request that the Examiner indicate that Claim 39, as well as Claims 45-52, 56, 57 and 62, are allowable over the art of record.

Traversal of Rejection under 35 U.S.C. § 103

In the Office Action, Claims 40-44 and 53-55 stand rejected under 35 U.S.C. § 103(a). Applicant notes that Claims 40-44 were rejected as being unpatentable over Bulard in view of Hahn and Claims 53-55 were rejected as being unpatentable over Bulard in view of Christensen. Applicants respectfully submit that each of these claims is dependent from an allowable independent claim, Claim 39, and therefore should be allowable over the art of record. Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection of the Claims 40-44 and 53-55 under Section 103(a) and indicate that these claims are allowed.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

Applicant respectfully submits that the above rejections and objections have been overcome and that the present application is now in condition for allowance. Therefore, the

Applicant respectfully requests that the Examiner indicate that Claims 39-57 and 62 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicant respectfully submits that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicant also has not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicant reserves the right to later contest whether a proper reason exists to combine these references and to submit indicia of the non-obviousness of the claimed management system.


The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: 
Nathan S. Smith
Registration No. 53,615
Attorney of Record
Customer No. 20,995
(949) 760-0404